

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta
JAN 20 2004

LUTHER D. THOMAS, Clerk
By: *J. Reed* Deputy Clerk

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

J. SCOTT ESKIND,
LORUS INVESTMENTS, INC., and
CAPITAL MANAGEMENT FUND,
LIMITED PARTNERSHIP,

Defendants.

Civil Action No.
1-02-CV-2429-MHS

**FINAL JUDGMENT INCLUDING ORDER OF PERMANENT INJUNCTION
AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission ("Commission"), having filed its Complaint herein, and defendants J. Scott Eskind ("Eskind"), Lorus Investments, Inc. ("Lorus") and Capital Management Fund, Limited Partnership ("Capital") (collectively "defendants"), having entered a general appearance, having admitted the in personam jurisdiction of this Court over them and the jurisdiction of this Court over the subject matter of the action, having waived entry of findings of fact and conclusions of law under Rules 52 and 65 of the Federal Rules of Civil Procedure and having waived any right to appeal from this Final Judgment, without admitting or denying the allegations of the Commission's Complaint, except as to jurisdiction and venue which they admit, and having consented to the entry of this Final Judgment and the Court being fully advised in the premises;

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants Eskind, Lorus and Capital and their agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. 77q(a)], by, through the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

1. employing any device, scheme or artifice to defraud;
2. obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser,

in the offer or sale of any security.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants Eskind, Lorus and Capital, and their agents, servants, employees and attorneys, and those persons in active concert or participation with them who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, be and hereby are permanently enjoined and restrained from violating, directly or indirectly, Section 10(b)

of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5], by, through the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange:

1. employing any device, scheme or artifice to defraud;
2. making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
3. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants Eskind and Lorus and their agents, servants, employees, attorneys and those persons in active concert or participation with them, who receive actual notice of this Final Judgment, by personal service, facsimile or otherwise, and each of them, be and hereby are, permanently enjoined and restrained from violating or aiding and abetting violations of Section 206 of the Investment Advisers Act of 1940 ("Advisers Act") [15 U.S.C. 80b-6], by, directly or indirectly, making use of means and instruments of transportation and communication in interstate commerce and of the mails:

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or

(3) to engage in any act, practice or course or business which is fraudulent, deceptive or manipulative.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, pursuant to Section 209(d) of the Advisers Act [15 U.S. C. 80b-9(d)], that defendant Eskind comply with the order of the Commission issued on February 2, 2000, barring him from association with any investment adviser.

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants Eskind, Lorus and Capital shall, within ten days of this order, take all steps necessary to transfer, to the special master appointed by this order, \$94,584.64 currently held in brokerage accounts frozen by previous order of this Court. The previous asset freeze is vacated insofar as it relates to this transfer to the special master.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in addition to the transfer of funds required by paragraph V., above, Defendants Eskind, Lorus and Capital are jointly and severally liable for disgorgement of \$3,661,786, representing \$2,853,383 in net gain, together with pre-judgment interest thereon in the amount of \$808,403. Eskind shall also pay a civil penalty in the amount of \$120,000, and Lorus and Capital shall pay civil penalties of \$120,000 each, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §

78u(d)(3)] and Section 209(e) of the Advisers Act [15 U.S.C. 80b-9(e)]. Defendants shall satisfy these obligations by paying said amounts within 60 days from the date of the entry of this Final Judgment by cashier's check, certified check, or postal money order made payable to the Special Master appointed by this Court; and submitted under a cover letter which identifies the payor as a defendant in these proceedings, a copy of which cover letter and money order or check shall be sent to William P. Hicks, District Trial Counsel, Securities and Exchange Commission, 3475 Lenox Road, N.E., Suite 1000, Atlanta, Georgia 30326-1232, within 65 days from the entry of this Final Judgment. By making this payment, defendants relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to defendants. Defendant Eskind shall transfer to the Special Master his residence on 1184 Dawn View Lane, Atlanta, Georgia 30327, as well as any interest that defendant Eskind has in any business, as well as his interest in that certain 1994 Mercedes Benz E-320, VIN WDBEA66E8KC139649, within 20 days of this Order. The Special Master will advise defendant Eskind's counsel within 20 days of transfer of the property as to the Special Master's best estimate of the equity available, minus any taxes, mortgage payments or costs payable. Eskind will be excused from transferring to the special master cash equivalent to the stated equity, until such time as the Special Master sells the residence. Should the Special Master receive less than the estimated equity, the remainder will become payable by Eskind within 30 days. The amount received by the Special Master will be deemed paid by Eskind in satisfaction of such amount of his disgorgement.

The Special Master may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant

to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the punitive effect of the civil penalty, no defendant shall, in any Related Investor Action, benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor in this action that is proportionately attributable to the civil penalty paid by such defendant ("Penalty Offset"). If the court in any Related Investor Action grants such an offset or reduction, the defendant shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against the defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

IX.

IT IS FURTHER ORDERED that S. Gregory Hays is appointed special master to take custody, control and possession of all assets to be transferred by the defendants pursuant to this order. Defendants will exercise no further ownership and control over such interests after transferring such interests to the special master.

X.

IT IS FURTHER ORDERED that any distributions, dividends, disbursements or other sums owed to the owner of any of the assets transferred will be paid to the special master, and that the special master will take possession of such funds and they will be considered a part of the interest until distributed or paid pursuant to order of the Court.

XI.

IT IS FURTHER ORDERED that the special master, after taking possession of such interests, will report to the Court within 45 days and recommend a method of liquidating such interests, and distributing any resulting funds, and any other disgorged funds, to the victims of the defendants' scheme, if feasible.

XII.

IT IS FURTHER ORDERED that the special master, as the special master deems necessary, may request this Court to grant the special master such other powers as may be necessary to efficiently administer and manage the interests.

XIII.

IT IS FURTHER ORDERED that the special master may apply to the Court for reasonable compensation for his services, to be paid out of the assets disgorged or derived from the liquidation of the interests disgorged.

XIV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that defendants shall comply with all of the undertakings and agreements set forth therein.

XV.

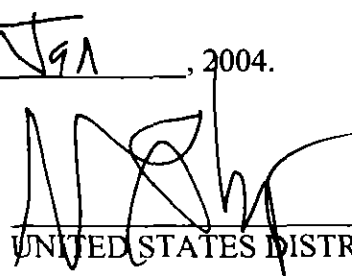
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this matter for all purposes, including implementing and enforcing the terms of this Final Judgment, and may order other and further relief that this Court deems appropriate under the circumstances.

XVI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

SO ORDERED, this 20th day of Jan, 2004.

ENTERED


UNITED STATES DISTRICT JUDGE

JAN 20 2004

By:

Deputy Clerk